

REMARKS

The Office Action of November 26, 2008 has been reviewed and the comments therein carefully considered. Claims 16-30 are pending in this application, of which claims 16 and 27 are in independent form. Pursuant to a restriction requirement, discussed further below, only claims 16-26 have been examined on the merits.

Election/Restriction Requirement

Restriction of the claims was required under 35 U.S.C. §121 and 372 to one of the following two Groups of claims:

Group I, claims 16-26, drawn to a package containing a plurality of products;
and

Group II, claims 27-30, drawn to a method for heating a package.

During a telephone call with Applicant's representative on November 19, 2008, a provisional election was made with traverse to prosecute the invention of Group I, claims 16-26. Claims 27-30 were withdrawn from further consideration.

Applicant hereby confirms the election of the claims of Group I, claims 16-26, for continued examination on the merits. Accordingly, as confirmed by the foregoing listing of claims, claims 27-30 are withdrawn from consideration. Applicant expressly reserves the right to pursue the unelected claims through the filing of one or more divisional applications.

Claim Objections

Claim 23 was objected to because of an apparent grammatical error in the phrase "and that weakened portions." Claim 23 has been amended to instead recite "and weakened portions" which addresses the grammatical error leading to the claim objection. Accordingly, reconsideration of the objection to claim 23 is respectfully requested.

Rejections Under 35 U.S.C. §112, second paragraph

Claims 16-26 stand rejected under 35 U.S.C. §112, second paragraph for indefiniteness for the various reasons set forth on pages 4 and 5 of the Office Action. The rejections will be addressed below in the order they appear in the Office Action.

It is asserted in the Office Action that claims 16-26 are unclear as to whether they relate to a filled package before or after use. While it is respectfully submitted that the

language defining the individual elements of the package of claim 16, for instance, is equally applicable to the package in a pre- or post- use condition, the present amendments to the claims should hopefully clear up any remaining ambiguities.

The Office Action indicates that the phrases "separated medium tightly" and "for a medium" are unclear. Claim 16 has been amended to replace the phrase "separated medium tightly" with the phrase "such that a medium cannot flow therebetween" and the phrase "for a medium" has been replaced with the phrase "through which a medium can flow" to clarify the intended meaning of the claim. This amendment is merely a rewording of the previous claim language and does not constitute the addition of new matter.

With respect to claims 16 and 18-25 it is asserted in the Office Action that it is unclear whether the "passage openings" are holes or blocked holes that have the ability to open. Claim 16 has been amended to define the "passage openings" as "openable" to clarify that the passage openings are blocked holes that have the ability to open.

Regarding claims 16 and 26, it is asserted that the phrase "a plurality of food products for heating, in particular food products" renders the claim indefinite because it is unclear whether the claim requires the presence of food or whether any product can be in the package. Claim 16 has been amended to instead read "a plurality of products for heating" to clarify that food products do not necessarily need to be in the package of claim 16. Claim 26 defines an assembly comprising the package of claim 16 with a plurality of food products placed therein. This claim would thus require the presence of food products.

Claim 17 has been amended to clarify that the cover is, in fact, present and also to eliminate the phrase "making use of a material layer." Each of these amendments is made to address the rejection of claim 17 for lack of clarity.

Regarding claim 19, it is asserted to be unclear whether all of the passage openings open at the same temperature. Claim 19 has been amended to clarify that the passage openings independently open under the influence of a determined temperature being exceeded, meaning that it is not necessary that the passage openings all open at the same temperature. Such an arrangement is supported in the application, as filed, in the paragraph beginning on line 21 of page 3 of the version of the specification annexed to the International Preliminary Examination Report.

Applicant submits that the foregoing claim amendments and remarks are sufficient to overcome each of the outstanding rejections under 35 U.S.C. §112, second paragraph. Accordingly, this rejection should be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §102(b)

Claims 16-21 and 25-26 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,013,798 to Goltsos. This rejection is respectfully traversed.

Claim 16 is directed to a package for containing a plurality of products and includes a disposable container provided with at least two compartments that are shielded from the environment and separated from each other such that a medium, such as air or water vapor, cannot flow between the compartments. The compartments are provided with openable passage openings, and a medium can flow through the passage openings when the passages are in the open position. By opening the passages, overpressure in the package can be reduced. Additionally, and perhaps most significantly, between different compartments, the passage openings differ, allowing the maximum pressure level in one compartment to vary from the maximum pressure level in a second compartment. For instance, if the package includes three compartments, a first compartment can be at a first pressure level, a second compartment can be at a second pressure level, and a third compartment can be at a third pressure level. Accordingly, food contained in each of the compartments is subjected to the corresponding pressure level of that compartment. Because varying the environmental pressure causes food to stabilize at a different cooking temperature, Applicant's package allows for a single heating source (such as a microwave) to cook various food items to different temperatures by regulating the cooking environment (i.e., pressure) of the various items.

Goltsos is directed to a container for heating food in which the food is contained in separate compartments. The container is covered by a transparent film which seals the individual compartments. The exterior seal around one compartment is loosened so that, when there is excess pressure built up in the compartment, the seal will rupture and the compartment can vent to the environment. In this way, Goltsos is not concerned with reducing the overpressure in the compartment, but instead focuses on equalizing the pressure in the compartment with the external environment.

In addition, the compartments containing water laden food in Goltosos (which are vented) are not separated from one another, but instead are in communication with one another through the communicating depressions 36. (Col. 4, lines 32-52.) According to Goltosos, by loosening the internal seals between water laden food compartments, one can avoid rupturing the seal between a compartment containing water laden food and a compartment containing bread which would allow the water vapor from the water laden food to contact the bread and make it soggy. (Goltosos, col. 4, lines 12-18.) Instead, with Goltosos's arrangement, the seal between the compartments containing water laden foods is weakened so that water vapor can vent in sequence from one water laden food-containing compartment to another and, eventually, to the atmosphere. (Goltosos, col. 4, lines 32-42.) Thus, Goltosos contains two types of compartments: those that are not vented at all (i.e., bread compartments) and compartments containing water laden foods which are all in equal pressure with one another and, upon venting, are also in equal pressure with the environment. The pressure between one vented compartment and another does not vary. This represents a significant departure from Applicant's package where the passage openings differ from one compartment to the next allowing for multiple vented compartments where each compartment can attain a different maximum pressure.

Accordingly, Goltosos does not disclose, teach or suggest a multi-compartment package where the individual compartments are provided with openable passages which differ from each other such that the pressure in the individual compartments is maximized at different pressure levels. Thus, the rejection of claims 16-26 under 35 U.S.C. §102(b) as being anticipated by Goltosos should be reconsidered and withdrawn.

Rejections Under 35 U.S.C. §103(a)

Claims 16-18, 20-21, and 25-26 stand rejected "in the alternative" under 35 U.S.C. §103(a) for obviousness over Goltosos. The Office Action takes the position that even if Goltosos does not anticipate a package in which different compartments are maximized at different pressure levels, it would render such a structure obvious. As support for this conclusion, the Office Action asserts that one skilled in the art would consider Applicant's design obvious because the design of Goltosos allows for each compartment to be maximized at different pressure levels by varying the weakened seals around the passage openings.

Applicant respectfully disagrees both with this reasoning and this conclusion. Goltsos, as discussed above, does not disclose or suggest an arrangement where the seal around the outer edge of the individual compartments can be varied to allow different maximum pressures to be maintained in the individual compartments. Such an arrangement is clearly beyond the scope of Goltsos's teachings and would be inconsistent with the suggestion in Goltsos that the vented compartments (i.e., the compartments containing water laden food) are all in communication with one another by way of depressions formed in the upper edge of the ridges separating the compartments. (Goltsos, col. 4, lines 32-36.) If the water laden compartments are in communication with one another, varying the strength of the venting seal around the edge of the package has virtually no effect on the maximum pressure in the compartments relative to one another since, both before and after the vent seal is ruptured, the pressures across the various interconnected compartments are equalized on account of the compartments being in communication with one another. The Office Action has not adequately explained why one skilled in the art would disregard the teachings of Goltsos in favor of a package where the maximum pressure level between individual compartments can vary. Thus, claims 16-18, 20-21, and 25-26 are not obvious in view of Goltsos.

Claims 19 and 22-23 stand rejected under 35 U.S.C. §103(a) for obviousness over Goltsos in view of U.S. Patent No. 6,210,724 to Clarke et al. Goltsos is applied as above with respect to claim 16, from which claims 19 and 22-23 depend. Goltsos admittedly fails to teach the use of passage openings that are blocked prior to use and open under the influence of a determined temperature being exceeded. Clarke is cited as disclosing a vent for a sealed package that responds to temperature changes. It is asserted in the Office Action that one skilled in the art would find it obvious to use the vent of Clarke on the package of Goltsos because Clarke teaches that packages should be vented during cooking to avoid high temperature and pressure build up. However, Goltsos is concerned with regulating the pressure build up in container compartments containing water laden foods. Goltsos is not concerned with regulating the temperature of the individual compartments. Clarke is concerned with a venting mechanism that responds to temperature changes. One skilled in the art reading Goltsos would not be motivated to substitute a temperature-dependent release because Goltsos is not concerned with temperature regulation, but instead with pressure release. Moreover, Clarke, like Goltsos, does not disclose a multi-compartment package

where the individual compartments can be maintained at different maximum pressure (or temperature) levels. Thus, one skilled in the art would not find claims 16-18, 20-21, and 25-26 obvious over Gotsos in view of Clarke.

Claim 24 stands rejected under 35 U.S.C. §103(a) for obviousness over Gotsos in view of U.S. Patent Application Publication No. 2001/0012530 to Hiyoshi. Gotsos is applied as above with respect to claim 16, from which claim 24 depends. Gotsos admittedly fails to teach passage openings that are disposed in the material layer. Hiyoshi is cited as teaching a vent hole disposed in the cover of a packaged food product. Hiyoshi is directed to a package containing a vent hole that opens when the contents of the package reach a predetermined pressure. Hiyoshi, however, like Gotsos, fails to teach a package having multiple compartments where the maximum pressure level allowed in the individual compartments can vary. Thus, reference to Gotsos and Hiyoshi in combination fails to render obvious the package of claim 24.

Issued European Patent

Applicant wishes to notify the Office that a counterpart European patent application issued as European Patent Number 1 597 159 B1 on December 15, 2008.

CONCLUSION

For the foregoing reasons, Applicant submits that the pending claims are patentable over the cited documents of record and are in condition for allowance. Accordingly, reconsideration of the outstanding rejections and allowance of claims 16-26 are respectfully requested.

Respectfully submitted,

THE WEBB LAW FIRM

By


John W. McIlvaine

Registration No. 34219

Attorney for Applicant

436 Seventh Avenue

700 Koppers Building

Pittsburgh, PA 15219

Telephone: (412) 471-8815

Facsimile: (412) 471-4094

E-mail: webblaw@webblaw.com